

EXHIBIT 160

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -
IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

(cross-captions on following pages)

Washington, D.C.

Thursday, February 27, 2007

9:00 a.m.

Videotaped deposition of DEIRDRE DUZOR

Volume II

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<p style="text-align: right;">Page 251</p> <p>1 IN THE COURT OF THE SECOND JUDICIAL CIRCUIT 2 IN AND FOR LEON COUNTY, FLORIDA 3 THE STATE OF FLORIDA 4 ex rel. 5 ----- 6 VEN-A-CARE OF THE FLORIDA KEYS,) 7 INC., a Florida Corporation, by and) 8 through its principal officers and) 9 directors, ZACHARY T. BENTLEY and) 10 T. MARK JONES,) 11 Plaintiffs,) Civil Action 12 vs.) No. 98-3032G 13 MYLAN LABORATORIES INC.; MYLAN) 14 PHARMACEUTICALS INC.; NOVOPHARM) Judge William 15 LTD., SCHEIN PHARMACEUTICAL, INC.;) L. Gary 16 TEVA PHARMACEUTICAL INDUSTRIES) 17 LTD.; TEVA PHARMACEUTICAL USA; and) 18 WATSON PHARMACEUTICALS, INC.,) 19 DEFENDANTS.) 20 ----- 21 22</p>	<p style="text-align: right;">Page 253</p> <p>1 A P P E A R A N C E S O F C O U N S E L 2 3 On behalf of the United States of America: 4 5 ANA MARIA MARTINEZ, ESQ. 6 United States Department of Justice 7 99 N.E. 4th Street 8 Miami, Florida 33132 9 (305) 961-9431 10 ana.maria.martinez@usdoj.gov 11 12 13 On behalf of the U.S. Department of Health & 14 Human Services: 15 16 BRIAN A. KELLEY, ESQ. 17 U.S. Department of Health & Human Services 18 Office of General Counsel, CMS Division 19 330 Independence Avenue, S.W., Room 5345 20 Washington, D.C. 20201 21 (202) 205-8702 22</p>
<p style="text-align: right;">Page 252</p> <p>1 IN THE CIRCUIT COURT OF 2 MONTGOMERY COUNTY, ALABAMA 3 ----- 4 STATE OF ALABAMA,) 5 Plaintiff,) 6 vs.) Case No. CV-2005-219 7 ABBOTT LABORATORIES, INC.,) Judge Charles Price 8 et al.,) 9 Defendants.) 10 ----- 11 Washington, D.C. 12 Thursday, February 27, 2007 13 9:00 a.m. 14 Videotaped deposition of DEIRDRE DUZOR, called 15 for examination by counsel for Abbott Laboratories 16 in the above-entitled matter, taken at the law 17 offices of Jones Day, 51 Louisiana Avenue, N.W., 18 Washington, D.C. 20001-2113, the proceedings being 19 recorded stenographically by Jonathan Wonnell, a 20 Registered Professional Court Reporter and Notary 21 Public of the District of Columbia, and transcribed 22 under his direction.</p>	<p style="text-align: right;">Page 254</p> <p>1 A P P E A R A N C E S (Cont'd) 2 3 On behalf of the State of Alabama: 4 5 H. CLAY BARNETT, III, ESQ. (via phone) 6 Beasley, Allen, Crow, Methvin, Portis & 7 Miles, P.C. 8 218 Commerce Street 9 Montgomery, Alabama 36104 10 (800) 898-2034 11 clay.barnett@beasleyallen.com 12 13 On behalf of the State of California: 14 15 RITA HANSCOM, ESQ. (via phone) 16 California Attorney General's Office 17 Civil Prosecutions Unit 18 P.O. Box 85266 19 110 West A Street, #1100 20 San Diego, California 92186 21 (619) 688-6099 22 rita.hanscom@doj.ca.gov</p>

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<p>1 A P P E A R A N C E S (Cont'd)</p> <p>2</p> <p>3 On behalf of the State of Florida:</p> <p>4</p> <p>5 MARY S. MILLER, ESQ. (via phone)</p> <p>6 Office of the Attorney General of Florida</p> <p>7 PL-01, The Capitol</p> <p>8 Tallahassee, Florida 32399-1050</p> <p>9 (850) 414-3600</p> <p>10 mary_miller@oag.state.fl.us</p> <p>11</p> <p>12</p> <p>13 On behalf of the City of New York and all New York</p> <p>14 Counties other than Nassau and Orange; the States</p> <p>15 of Wisconsin, Illinois, Kentucky, Idaho, Alaska,</p> <p>16 Hawaii, South Carolina and Mississippi:</p> <p>17</p> <p>18 MICHAEL WINGET-HERNANDEZ, ESQ.</p> <p>19 Winget-Hernandez, LLC</p> <p>20 3112 Windsor Road, Suite 228</p> <p>21 Austin, Texas 78703</p> <p>22 michael@winget-hernandez.com</p>	<p>1 A P P E A R A N C E S (Cont'd)</p> <p>2</p> <p>3 On behalf of Bristol-Myers Squibb:</p> <p>4</p> <p>5 SANDHYA P. KAWATRA, ESQ. (via phone)</p> <p>6 Hogan & Hartson</p> <p>7 875 Third Avenue</p> <p>8 New York, New York 10022</p> <p>9 spkawatra@hhlaw.com</p> <p>10 (212) 918-3542</p> <p>11</p> <p>12</p> <p>13 On behalf of Dey, Inc., Dey, L.P. and Mylan:</p> <p>14</p> <p>15 NEIL MERKL, ESQ.</p> <p>16 Kelley, Drye & Warren LLP</p> <p>17 101 Park Avenue</p> <p>18 New York, New York 10178</p> <p>19 (212) 808-7811</p> <p>20 nmerkl@kelleydrye.com</p> <p>21</p> <p>22</p>
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<p>1 A P P E A R A N C E S (Cont'd)</p> <p>2</p> <p>3 On behalf of Ven-A-Care of the Florida Keys, Inc.:</p> <p>4</p> <p>5 ROSLYN G. POLLACK, ESQ.</p> <p>6 Berger & Montague P.C.</p> <p>7 1622 Locust Street</p> <p>8 Philadelphia, Pennsylvania 19103-6305</p> <p>9 (215) 875-3000</p> <p>10 rpollack@bm.net</p> <p>11</p> <p>12</p> <p>13 On behalf of Abbott Laboratories, Inc.:</p> <p>14</p> <p>15 DAVID TORBORG, ESQ.</p> <p>16 Jones Day</p> <p>17 51 Louisiana Avenue, N.W.</p> <p>18 Washington, D.C. 20001-2113</p> <p>19 (202) 879-3939</p> <p>20 dstorborg@jonesday.com</p> <p>21</p> <p>22</p>	<p>1 A P P E A R A N C E S (Cont'd)</p> <p>2</p> <p>3 On behalf of Roxane Laboratories and</p> <p>4 Boehringer Ingelheim:</p> <p>5</p> <p>6 JOHN W. REALE, ESQ.</p> <p>7 Kirkland & Ellis</p> <p>8 200 East Randolph Drive</p> <p>9 Chicago, Illinois 60601</p> <p>10 (312) 861-3452</p> <p>11 jreale@kirkland.com</p> <p>12</p> <p>13</p> <p>14 On behalf of Sandoz, Inc.:</p> <p>15</p> <p>16 LARA A. BERWANGER, ESQ. (via phone)</p> <p>17 White & Case LLP</p> <p>18 1155 Avenue of the Americas</p> <p>19 New York, New York 10036-2787</p> <p>20 (212) 819-2549</p> <p>21 lberwanger@whitecase.com</p> <p>22</p>

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<p>1 A P P E A R A N C E S (Cont'd)</p> <p>2</p> <p>3 On behalf of Schering-Plough Corporation,</p> <p>4 Schering Corporation and Warrick</p> <p>5 Pharmaceuticals Corporation:</p> <p>6</p> <p>7 GINGER APPLEBERRY, ESQ. (via phone)</p> <p>8 Locke, Liddell & Sapp</p> <p>9 2200 Ross Avenue, Suite 2200</p> <p>10 Dallas, Texas 75201</p> <p>11 (214) 740-8459</p> <p>12 gappleberry@lockeliddell.com</p> <p>13</p> <p>14</p> <p>15</p> <p>16 ALSO PRESENT:</p> <p>17</p> <p>18 CONWAY BARKER, Videographer</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 E X H I B I T S (CONTINUED)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit Abbott 493, Article from "Drug Topics"</p> <p>4 entitled "On AMP Issue,</p> <p>5 Feds and Pharmacists Are</p> <p>6 Wide Apart" (No Bates ref). 427</p> <p>7 Exhibit Abbott 494, Power Point presentation by</p> <p>8 Steven Stranne 11/10/04</p> <p>9 (no Bates ref)..... 447</p> <p>10 Exhibit Abbott 495, NASMD 0001285 through 1287. 450</p> <p>11 Exhibit Abbott 496, NASMD 0001288 through 1292. 462</p> <p>12 Exhibit Abbott 497, NASMD 0001293 through 1295. 467</p> <p>13 Exhibit Abbott 498, Transcript of testimony of</p> <p>14 Dennis Smith before the</p> <p>15 Committee on Finance on</p> <p>16 Medicaid Fraud and Abuse</p> <p>17 6/28/05 (No Bates ref).... 469</p> <p>18 Exhibit Abbott 499, Transcript of a fall 2006</p> <p>19 meeting of the National</p> <p>20 Association of State</p> <p>21 Medicaid Directors,</p> <p>22 11/15/06 (no Bates ref).... 478</p>
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<p>1 (physicians and pharmacies) for deficiencies 2 elsewhere in the payment system. If and when the 3 method for estimating acquisition costs is 4 altered, it may be desirable to reconsider the 5 payment policy as a whole." Do you see that? 6 A. Yes, I do. 7 Q. Do you recall discussion at the panel 8 meeting that margins or spreads may be 9 compensating providers for deficiencies elsewhere 10 in the system? 11 MS. MARTINEZ: Objection, form. 12 A. I don't recall the discussion, but it 13 could have been discussed. 14 Q. Is that a topic that's been discussed 15 at other meetings that you've been at? 16 MS. MARTINEZ: Objection, form. 17 A. Well, after the Deficit Reduction Act 18 was passed we did acknowledge -- CMS did 19 acknowledge in a -- I believe a state Medicaid 20 director's letter -- that when the new federal 21 upper limits went into effect that states may 22 want to review their dispensing fees to assure</p>	<p>1 industry about the fact that insufficient 2 dispensing fees were being cross subsidized by 3 margins and spreads on ingredient costs, were 4 you? 5 MS. POLLACK: Objection to form. 6 MR. KELLEY: Objection to form. 7 MS. MARTINEZ: Objection, form. 8 A. What I was aware of was that there was 9 a spread in the ingredient cost and in some 10 states that may have led to states not keeping 11 their dispensing fees up to date in terms of cost 12 to dispense because the overall reimbursement was 13 generous. 14 Q. I'd like to ask you to go to 458. 15 MR. TORBORG: It may be that you have 16 to get, Ani, the Manila folder behind you. 458? 17 Is it in there? 18 MS. MARTINEZ: Yeah. It should be. 19 BY MR. TORBORG: 20 Q. Ms. Duzor, this is a GAO report dated 21 March of 1993. It's titled "Medicaid, Outpatient 22 Drug Costs and Reimbursements for Selected</p>
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<p>1 that they are adequate to cover the cost of 2 dispensing. 3 Q. And that's something that you issued in 4 connection with a decrease in -- a potential 5 decrease in ingredient cost reimbursement; is 6 that right? 7 A. I believe it was a state Medicaid 8 director's letter discussing or describing the 9 pharmacy provisions of the DRA. 10 Q. And one of those provisions was to 11 reduce the payment on the ingredient cost through 12 FUL legislation; is that right? 13 A. Right. It was a new method by which 14 the federal upper limits would be established. A 15 new formula. 16 Q. That CMS expected would decrease the 17 amount for ingredient cost, correct? 18 MR. WINGET-HERNANDEZ: Objection, form. 19 A. Yes, that it would on many drugs, that 20 the FULs would be decreased on many drugs. 21 Q. As the co-lead of CMS's pharmacy team 22 you were not unaware of the dialogue in the</p>	<p>1 Pharmacies in Illinois and Maryland." Ms. Duzor, 2 if you would take a look at this to see if this 3 is something that you have ever reviewed in 4 connection with your role as the co-lead of the 5 CMS pharmacy team. 6 A. No. I don't recall ever seeing this 7 and note that it was nine years preceding my 8 involvement in Medicaid drug policy. 9 Q. When you started at CMS on the pharmacy 10 issues in 2002 did you make any effort to go back 11 and review OIG, GAO or other reports pertinent to 12 Medicaid pharmacy? 13 A. I don't recall whether I did or not. 14 Q. I'd like to ask you to go to page 6 of 15 this document. The first paragraph -- this is 16 the GAO report where they wrote "Although total 17 Medicaid reimbursements exceeded the pharmacies' 18 total drug purchase costs for the drugs we 19 reviewed, whether this represents unreasonable 20 benefits for the pharmacies is not clear. 21 Neither HCFA nor the states have determined what 22 would be an appropriate margin between</p>

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<p>1 Q. Do you recall knowing or have you been 2 aware of the fact that states, at least 3 Minnesota, according to Mr. Wiberg, considered 4 the spread between AAC and AWP when determining 5 what to pay for dispensing fee? 6 MR. KELLEY: Objection, form. 7 MS. MARTINEZ: Objection, form. 8 A. As I said, I have never seen this e- 9 mail before. So no, I was not aware that 10 Minnesota thought of that in setting theirs, in 11 setting their ingredient cost. 12 Q. Does this -- 13 A. Dispensing fee. I'm sorry. 14 Q. Does this surprise you, this language? 15 MS. MARTINEZ: Objection, form. 16 A. No. It doesn't surprise me. But I 17 think it's a well established fact at this point 18 in time. I'm not sure whether this would have 19 been surprising or not back in 2000. He may have 20 been ahead of his time. This may have been a 21 revelation at that point. 22 Q. Or it could have been just what</p>	<p>1 Q. And do you have any knowledge about 2 that? 3 A. No, I don't. 4 Q. Do you have any reason to believe that 5 what Mr. Wiberg was saying here was not correct? 6 MR. KELLEY: Objection to form. 7 MS. MARTINEZ: Objection to form. 8 A. No, I have no reason to have any 9 opinion on it. It's not something I am familiar 10 with. 11 Q. If we go to the next paragraph, he ends 12 it with the sentence "However, the problem should 13 be approached in one of two ways. One, state 14 Medicaid agencies should be allowed to work out 15 their own solutions (by increasing the discount 16 off of AWP, adjusting the dispensing fee, 17 establishing MACs, et cetera); or two, a national 18 solution should be pursued that accounts for all 19 aspects of the problem and that is developed by 20 and with input from all interested parties 21 (NAMFCU, state Medicaid agencies, private third 22 party payors, First Databank, pharmacy</p>
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<p>1 everyone knew at the time who was operating in 2 the state pharmacy area? 3 MS. MARTINEZ: Objection to form. 4 A. I can't speak to that. I wasn't part 5 of that at that time. 6 Q. If I can skip a paragraph, Mr. Wiberg 7 wrote "Some public and private third party payors 8 have purposely kept dispensing fee low precisely 9 because there is a spread between AWP and AAC." 10 Do you see that? 11 A. Yes, I do. 12 Q. Is that repeating the same sentiment 13 that he made earlier? 14 MS. MARTINEZ: Objection to form. 15 A. It seems to be, with the extension of 16 it to private third parties in addition to public 17 payors. 18 Q. He says "In fact when pharmacy 19 organizations have sought an increase in 20 dispensing fees, the AWP spread has been pointed 21 out to legislatures." Do you see that? 22 A. Yes, I do.</p>	<p>1 organizations, et cetera.)" Do you see that? 2 A. Yes. 3 Q. Have you heard any discussion with 4 states or within CMS that on this issue of 5 pharmacy reimbursement the state agencies should 6 be able to work out their own pricing, their own 7 solutions to what they think is most effective? 8 MS. MARTINEZ: Objection, form. 9 A. No. I don't recall ever being part of 10 any discussions. 11 Q. Is that something that you have 12 considered in your role as the co-lead of the CMS 13 pharmacy team charged with approving state plans 14 for payment of drugs? 15 MS. MARTINEZ: Objection, form. 16 MR. WINGET-HERNANDEZ: Objection, form. 17 A. There is a regulation that says that 18 state Medicaid payments should be estimated 19 acquisition cost plus reasonable dispensing fee. 20 So I would have to say that the answer is no, 21 that we wouldn't think it appropriate to allow 22 states to be totally on their own because to the</p>

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<p>1 extent that what they would do would be</p> <p>2 inconsistent with our regulation we would have an</p> <p>3 obligation to review their state plan and these</p> <p>4 prices have to be in their state plan.</p> <p>5 (Exhibit Abbott 493 was marked for</p> <p>6 identification.)</p> <p>7 BY MR. TORBORG:</p> <p>8 Q. For the record, what I've marked as</p> <p>9 Exhibit 493 is a September 3rd 2007 article from</p> <p>10 Drug Topics titled "On AWP issue feds and</p> <p>11 pharmacists are wide apart." And Ms. Duzor, if</p> <p>12 you would take a look at this document and let me</p> <p>13 know if you are familiar with it.</p> <p>14 A. No. I'm not familiar with it.</p> <p>15 Q. This is an article that quotes you; is</p> <p>16 that right?</p> <p>17 A. I haven't gotten that far.</p> <p>18 Q. I'm sorry.</p> <p>19 A. (Reading.) Okay. I've completed</p> <p>20 reading it.</p> <p>21 Q. This is an article that's quoting you;</p> <p>22 is that right?</p>	<p>1 costs. Duzor acknowledged that CMS is concerned</p> <p>2 about whether AMP will hurt patient access to</p> <p>3 care, but she believes things will work out for</p> <p>4 pharmacies as long as states figure out how to</p> <p>5 make it work." Do you see that?</p> <p>6 A. Yes, I do.</p> <p>7 Q. What did you mean when you said "as</p> <p>8 long as states figure out how to make it work"?</p> <p>9 A. Actually, that last sentence doesn't</p> <p>10 sound to me like something I said. So I think</p> <p>11 it's probably -- it's their reworking of</p> <p>12 something I said. I don't believe I said that we</p> <p>13 had concerns about whether AMP will hurt patient</p> <p>14 access to care. We don't have any concerns. We</p> <p>15 don't believe it will.</p> <p>16 Q. So --</p> <p>17 A. I mean, if it did have an adverse</p> <p>18 effect on patient care we would care about that.</p> <p>19 But we don't believe that it would.</p> <p>20 Q. So it's your testimony that you've been</p> <p>21 in this article misquoted?</p> <p>22 MS. MARTINEZ: Objection, form.</p>
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<p>1 A. Yes, it does.</p> <p>2 Q. And it concerns a topic we covered</p> <p>3 earlier today, which is the use of AMP to</p> <p>4 calculate federal upper limits; is that right?</p> <p>5 A. Yes. Indirectly. It doesn't actually</p> <p>6 talk about federal upper limits, but --</p> <p>7 Q. Well, the average manufacturer price</p> <p>8 final rule referred to in the second and third</p> <p>9 sentences of this article, can you think of any</p> <p>10 other AMP final rule besides the federal upper</p> <p>11 limit rule?</p> <p>12 A. No. I agree with you it is -- the AMP</p> <p>13 final rule does deal with the issue of the new</p> <p>14 federal upper limits.</p> <p>15 Q. In the fourth paragraph the article</p> <p>16 states "In contrast, Duzor" -- that would be you,</p> <p>17 right?</p> <p>18 A. That would be me.</p> <p>19 Q. "Said the AMP rule would allow Medicaid</p> <p>20 to pay more appropriately for drugs since the</p> <p>21 agency has been overpaying for these products</p> <p>22 using former sources of pricing that overstated</p>	<p>1 Q. Is that fair to say?</p> <p>2 MS. MARTINEZ: Objection, form. This</p> <p>3 was not a direct quote in that paragraph.</p> <p>4 Q. You've been misparaphrased?</p> <p>5 A. Yes. I would say I believe in that</p> <p>6 last sentence I've been misparaphrased, yes.</p> <p>7 Q. Do you believe her article does not</p> <p>8 fairly reflect what -- did you talk to Judy Chi?</p> <p>9 A. No, I didn't. She --</p> <p>10 Q. Do you know where she's getting this</p> <p>11 from?</p> <p>12 A. I did speak to several groups after the</p> <p>13 final rule was published. So I assume it was</p> <p>14 from one of those presentations.</p> <p>15 Q. So it's your testimony to the jury that</p> <p>16 you don't believe that CMS has concerns about</p> <p>17 whether AMP will hurt patient access to care?</p> <p>18 MR. WINGET-HERNANDEZ: Objection to</p> <p>19 form.</p> <p>20 MS. MARTINEZ: Objection, form.</p> <p>21 Q. That's your testimony?</p> <p>22 MS. MARTINEZ: Objection, form.</p>

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<p style="text-align: right;">Page 483</p> <p>1 page of the document titled "federal expressions 2 of intent on increasing dispensing fees under the 3 Deficit Reduction Act." Do you see that? 4 A. Mm-hmm. 5 Q. You were quoted at the bottom at the 6 meeting that I just showed you a transcript of 7 which said "The states should be reviewing the 8 adequacy of Medicaid pharmacy reimbursement." Do 9 you see that? 10 A. Yes, I do. 11 Q. What did you mean by that? 12 MR. WINGET-HERNANDEZ: Objection, form. 13 A. At this point out of context I don't 14 know what I meant by that. 15 Q. And at the very top Senator Grassley is 16 quoted as saying "CMS should make clear to states 17 that they should reconsider the dispensing fees 18 paid to pharmacies under Medicaid, particularly 19 for generic drugs." Do you see that? 20 A. Yes. 21 Q. Has CMS done that? Have they made 22 clear to states that they should reconsider the</p>	<p style="text-align: right;">Page 485</p> <p>1 Q. I'd like to ask you to go to in the 2 Redwell that's in front of you Abbott Exhibit 3 475. This is one that we marked at a deposition 4 last week that's not yet in those binders. 5 Ms. Duzor, I'll ask you to take a look 6 at that. It's a December 2004 paper from the 7 Congressional Budget Office titled "Medicaid's 8 Reimbursements to Pharmacies for Prescription 9 Drugs." The first question will be whether or 10 not you've had a chance to see this. 11 A. (Reading.) I don't recall seeing this 12 document, but I may have. There are lots of 13 things coming out all the time, so -- but I don't 14 specifically remember seeing this. 15 Q. If you would go through the document, 16 eventually you will see something with a page 3 17 in the upper right-hand corner. 18 A. Yes. 19 Q. It has a figure 1 there? 20 A. Yes. 21 Q. It says "markups per prescription." Do 22 you see that?</p>
<p style="text-align: right;">Page 484</p> <p>1 dispensing fees, particularly for generic drugs? 2 A. We haven't stated it that strongly. 3 But as I was discussing earlier today, we did put 4 out a letter which encouraged states to look at 5 their dispensing fees with changes in the 6 ingredient cost, reimbursement for ingredient 7 cost. 8 Q. You, CMS, drew a connection between the 9 two, decreasing the ingredient cost and 10 increasing the dispensing fee, correct? 11 MS. MARTINEZ: Objection to form. 12 MR. KELLEY: Objection to form. 13 A. Yes. I would say we drew a connection. 14 We didn't say states should reconsider. We said 15 something to the effect of states may want to 16 look at or should review their dispensing fees in 17 light of changes to ingredient cost 18 reimbursement. 19 Q. And you expected that the dispensing 20 fees would increase, correct? 21 A. Yes. We expected that should there be 22 a need for change it would likely be an increase.</p>	<p style="text-align: right;">Page 486</p> <p>1 A. Yes. 2 Q. And then there's a section to the left 3 called "measuring markups." Do you see that? 4 A. Yes. 5 Q. And CBO wrote "In addition to dollar 6 terms, the difference between the amount that 7 Medicaid pays pharmacies for prescription drugs 8 and the amount that manufacturers charge 9 pharmacies for the drugs can be expressed in 10 percentage terms as a margin (or gross margin) -- 11 that is, the difference between what Medicaid 12 pays a pharmacy and the cost of acquiring the 13 drug from the manufacturer divided by Medicare's 14 payment." Do you see that? 15 A. Yes, I do. 16 Q. Do you have an understanding of what 17 they're talking about there? 18 A. Yes. 19 Q. It's referring to two different ways of 20 measuring the markup; one would be an absolute 21 dollar term and one would be as a percentage; is 22 that right?</p>

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<p style="text-align: right;">Page 527</p> <p>1 dispensing fees would be sufficient to ensure 2 that pharmacies would dispense drugs to Medicaid 3 beneficiaries? 4 MS. MARTINEZ: Objection to form. 5 A. I think that that question would need 6 to be considered on a state by state basis to 7 take into account their dispensing fee. Given 8 that they're not all the same I think it just 9 follows that there could not be one answer that 10 would be consistent across all states. 11 Q. Is it fair to say you can think of 12 states where you would not feel comfortable that 13 paying a true acquisition cost with no other 14 changes to the reimbursement system would not be 15 sufficient to ensure access? 16 MS. MARTINEZ: Objection, form. 17 A. I don't know where the line would be 18 drawn. But I think that there may be some states 19 that were paying very low dispensing fees where 20 that would not be adequate reimbursement for a 21 pharmacy. 22 Q. And would you feel comfortable assuming</p>	<p style="text-align: right;">Page 529</p> <p>1 Q. Well, are you familiar with what 2 happened when the Department of Justice and 3 NAMFCU attempted to have states use new AWP for 4 a subset of drugs in 2000? 5 A. No. I'm not familiar with that. 6 Q. Would what happened in that scenario be 7 probative of what happen if there was a sudden 8 change? 9 MR. KELLEY: Objection to form. 10 MS. MARTINEZ: Objection to form. 11 A. I'm not familiar with what happened 12 there. 13 Q. Would you feel comfortable in assuming 14 that if the AWP prices in the compendia were the 15 true average acquisition price that the states 16 would not want to have added a markup to drugs to 17 ensure access and a reasonable profit level? 18 MS. MARTINEZ: Objection to form. 19 A. Indeed I think our regulations would 20 call for them to assure that there was a 21 reasonable dispensing fee such that adequate 22 access would have been maintained for Medicaid.</p>
<p style="text-align: right;">Page 528</p> <p>1 that a change to paying actual acquisition cost 2 would not have resulted in any change to 3 dispensing fees at any of the state Medicaid 4 programs? 5 MS. MARTINEZ: Objection, form. 6 A. No. I think it may have resulted in a 7 change in dispensing fees. 8 Q. Do you feel comfortable in assuming 9 that had prices been provided in the compendia 10 that were the actual prices at which pharmacies 11 could buy drugs, if those were provided just 12 overnight, there was a change, would you feel 13 comfortable that some states would want to go 14 back to the old prices, would have actually 15 requested to go back to the old prices? 16 MS. MARTINEZ: Objection, form. 17 A. Given that there's a regulation saying 18 that you have to pay an actual acquisition cost 19 or estimated acquisition cost, I don't understand 20 your question. Would states have requested to. 21 It seems like that would be a nonissue or outside 22 of the realm of possibility.</p>	<p style="text-align: right;">Page 530</p> <p>1 Q. If there had been a sudden change in 2 the way -- a sudden reduction in the AWP prices 3 reported in the compendia, do you feel 4 comfortable in assuming that state legislatures 5 would not have opposed a sudden change in the 6 understanding of what AWP's represented? 7 MS. MARTINEZ: Objection to form. 8 A. I can't speak to what state 9 legislatures may or may not have done in a 10 hypothetical situation. 11 Q. Do you feel comfortable in making any 12 assumptions about what the total amount of 13 reimbursement would have been had the AWP's in the 14 compendia actually represented the actual price 15 at which pharmacies purchased drugs? 16 MS. POLLACK: Objection, form. 17 A. Sitting here I couldn't give you a 18 figure. I think it would be substantial and that 19 such an estimate would be possible. 20 Q. And that estimate may depend on the 21 specific drugs at issue? 22 A. Yes. For the drugs at issue.</p>

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